

REMARKS

This communication is responsive to the Office Action dated November 23, 2011. Claims 1-50 are pending in this application. Claims 1-24 have been withdrawn. Claims 25, 33, 37, 39, and 45 have been amended. Claims 49 and 50 are newly present. Support for the amendments may be found, for example in paragraphs [0003], [0018] and [0022] of the specification as originally filed. Applicants respectfully submit that no new matter has been added by the foregoing amendments., and the application is in condition for allowance. Nevertheless, and solely for purposes of expediting prosecution of the present application, Applicants have amended independent claims 25 and 37.

Claim Objections

Claims 25, 31, 33-37, 43, and 45-48 are objected for including abbreviations "CPAP" and "ECG." By the present response, Applicants have amended claims by spelling out the abbreviated terms in their first instances. Withdrawal of the objection is respectfully requested.

Claim Rejections - 35 U.S.C. § 102/103

Independent claims 25 and 37 presently stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,029,665 ("Berthon-Jones") and as obvious under 35 U.S.C. § 103 over Berthon-Jones in view of in view of Ayappa et al ("Ayappa"). Applicants respectfully disagree with the rejections.

Applicants' invention of claim 25 is an apparatus for determining a patient's cardiac condition. The apparatus at least includes a controller that

senses the patient's cardiogenic pressure oscillations from the pressure signal; and

uses the sensed cardiogenic oscillations to determine the patient's cardiac condition.

Applicants respectfully submit that the Examiner has not cited to all features of the Applicant's invention in either or both of the *Berthon-Jones* and *Ayappa* references. For example, as identified in the citations in the Office Action, *Berthon-Jones* merely expresses a determination of cardiogenic oscillations by evaluation of an airflow signal (Col. 13, line 62 -Col. 14, line 5). Similarly, the *Ayappa* reference is entitled "Cardiogenic Oscillations on the Airflow Signal During Continuous Positive airway Pressure as a Marker of Central Apnea." However, Applicants' present technology involves sensing of cardiogenic pressure oscillations. Applicants' present technology may be particularly appreciated in view of the signal graph of FIG. 2, illustrating the pressure oscillations at reference character 48. Applicants submit that claim 25 is in condition for allowance since a *prima facia* rejection of anticipation has not been presented. Accordingly, Applicants request that the Examiner withdraw the rejection of independent claim 25.

Moreover, Applicants request that the Examiner withdraw the rejection of remaining independent claim 37, which may be compared with the subject matter of claim 25, since all of its features have not been identified in the prior art.

Finally, Applicants request that the Examiner withdraw the rejections of the claims that depend from 25 and 37, which also contain allowable subject matter in addition to the subject matter of the independent claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephones applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,
Electronic signature:
/Raymond B. Churchill, Jr./
Raymond B. Churchill, Jr.
Registration No.: 44,617
LERNER, DAVID, LITTENBERG,
KRUMLIK & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

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